

REG-24-001 ENTITIES SUBJECT TO THE CORPORATION INCOME TAX

001.01 Any corporation or any other entity taxed as a corporation under the Internal Revenue Code whether foreign, domestic or domesticated shall be subject to the Nebraska income tax; provided such corporate entity is not exempt under the provisions of Public Law 86-272 (15 U.S.C.A. 381-384, 1959) or is not a financial institution, and has part of its federal taxable income derived from sources within Nebraska.

001.01A Any income derived from activities in Nebraska is subject to the Nebraska income tax unless otherwise exempted by federal statute.

001.01B A financial institution is: (1) any bank, building and loan association, cooperative credit association, credit union, industrial loan and investment company, savings and loan association, or savings bank chartered or qualified to do business in this state, or any subsidiary of such financial institution; or (2) any bank, bank holding company or subsidiary of a bank holding company as defined in 12 U.S.C. 1841, affiliate of a bank holding company as defined in 12 U.S.C. 221a, building and loan association, cooperative credit association, credit union, industrial loan and investment company, savings and loan association, or savings bank which is not chartered to do business in this state but maintains a permanent place of business in this state and actively solicits deposits from residents of this state for an affiliate, regardless of whether the affiliate maintains an office in this state, in which event the deposits of the affiliate shall be deemed deposits of such institution.

(Sections 77-2734.02, 77-2734.04, and 77-3801, R.R.S. 1996. November 11, 1998.)

REG-24-002 Repealed.

REG-24-003 EXEMPT ORGANIZATIONS

003.01 Tax-exempt status; Determination letter; Internal Revenue Service determination letter issued. Any organization transacting business in Nebraska and exempt from federal income tax for which a ruling or determination letter has been issued by the Internal Revenue Service is exempt from Nebraska income tax.

003.02 Tax-exempt status; Internal Revenue Service determination letter not issued. Any organization which is exempt under the regulations of the Internal Revenue Service, for which a ruling or determination letter is not issued, is exempt from Nebraska income tax.

003.03 Filing requirements; income tax returns; revocation of tax-exempt status. No annual income tax information returns will be required from exempt organizations unless a federal return of unrelated business income is required to be filed. If such a federal return is required, the organization shall report those items of unrelated business income which are attributable to income derived from Nebraska sources. Such information shall be filed on Form 1120N. If the tax exempt status is revoked by the Internal Revenue Service, the Nebraska Department of Revenue must be notified within ninety days.

(Section 77-2714, R.R.S. 1943. December 4, 1984.)

REG-24-004 S CORPORATION

004.01 Filing requirements; Form 1120-SN. A small business corporation that has elected to file under Subchapter S of the Internal Revenue Code shall file Form 1120-SN for purposes of reporting net income of the S corporation and income subject to Nebraska income tax by the respective shareholders.

004.02 Character of income and deductions to shareholders. Each shareholder's proportionate part of the corporation's income and deductions will retain the same character and classification as allowed for federal income tax purposes.

004.03 Nonresident shareholder income tax returns and withholding. Nonresident shareholders shall file a Nebraska income tax return and include in Nebraska adjusted gross income that portion of the corporation's Nebraska income tax allocable to their interest in the corporation, together with any other Nebraska source income.

004.03A Each nonresident shareholder shall execute Form 12N which shall be attached to the corporation tax return, Form 1120-SN. Form 12N is an agreement which provides that the shareholder will file a Nebraska income tax return and pay income tax on all income received from Nebraska sources.

004.03B If a nonresident shareholder's executed Form 12N is not attached to the corporation tax return, the corporation shall complete Form 14N and withhold and remit an amount equal to the highest individual income tax rate on the nonresident shareholder's share of the corporation's taxable income which was derived from or attributable to sources within this state.

004.03C Nonresident shareholders do not have to file a return if their only connection with the state is the conduct of the business activities of the S corporation, and the corporation has withheld tax from all the Nebraska income attributable to the nonresident's share of the organization's income. The full amount of the withholding is, at the taxpayer's option, retained in lieu of the filing of an individual income tax return. Any nonresident who so desires can still file a return and claim a refund if there is one due. Any nonresident who files Form 12N to avoid withholding must still continue to file Form 1040N.

(Section 77-2734.01, R.R.S. 1996. November 11, 1998.)

REG-24-005 COOPERATIVE ORGANIZATIONS

005.01 In general. Any corporation or other entity organized as a cooperative under the Internal Revenue Code, which has federal taxable income derived from sources within Nebraska shall be subject to the Nebraska income tax if it is exercising its franchise within Nebraska. Additionally, if such cooperative is engaged exclusively in interstate or foreign commerce and

has part of its federal taxable income derived from sources within Nebraska or has activities carried on within Nebraska, it shall be subject to the Nebraska income tax.

005.02 Computation of taxable income. For tax years beginning January 1, 1977, and thereafter, the cooperative taxable income base for Nebraska purposes shall be the federal taxable income derived from sources within this state. For tax years beginning after December 31, 1973, and before January 1, 1977, the cooperative taxable income base for Nebraska purposes shall be the entire net income derived from all sources within this state, including distributions of earnings and profits of the cooperative to members or patrons such as dividends paid on capital stock, nonpatronage income allocated to patrons, or patronage dividends attributable to this state as shall be excludable or deductible by such corporation for federal income tax purposes. The cooperative is allowed to deduct from the taxable income base such current distributions that are paid in money. However, this deduction does not include the redemption of prior year's distributions that were not paid in money such as qualified and nonqualified written notices of allocation.

005.03 Tax return filing requirements. Cooperative organizations shall report their income tax liability on Form 1120N.

005.03A The due date of the return is the same as the due date for the federal income tax return.

005.03B The cooperative organization shall pay the entire amount of tax on or before the prescribed due date, without regard to any extension granted for filing the return.

005.03C A cooperative organization is entitled to extensions of time to file the return the same as any other corporation. See Reg-24-007 covering extensions of time to file a corporate return.

(Section 77-2734.03, R.S.Supp., 1984. December 4, 1984.)

REG-24-006 CORPORATE INCOME TAX RETURNS: DUE DATE AND PAYMENT OF TAX

006.01 The due date for Nebraska Corporation Income Tax Return, Form 1120N, is the 15th day of March following the close of the calendar year. If the corporate taxpayer is on a fiscal year basis, the due date is the 15th day of the third month following the close of the fiscal year. The corporate taxpayer shall pay the entire amount of tax on or before the prescribed due date, without regard to any extension granted for filing the return.

(Section 77-2768, R.R.S. 1996. November 11, 1998.)

REG-24-007 CORPORATION INCOME TAX RETURNS: EXTENSIONS OF TIME FOR FILING OR PAYMENT

007.01 Extensions of time for filing. A corporate taxpayer may obtain an automatic extension of seven months for filing its return, provided that Form 7004N is filed on or before the prescribed due date for the return and provided that the amount of tentatively computed tax liability is paid on or before the original due date for filing the corporation income tax return. This extension, however, can be terminated at any time by the Tax Commissioner by a mailing to the taxpayer of a notice of such termination at least ten days prior to the termination date as fixed in the notice. This will allow the corporate taxpayer ten (10) days from the date of the termination notice to file the Nebraska corporate return. If a federal extension of time has been granted, then a state extension will be granted if a copy of the federal application for automatic extension of time to file or the approved federal extension is attached to the Nebraska return when filed.

007.01A Form 7004N should be prepared in duplicate and the original should be filed with the Tax Commissioner.

007.01B Form 7004N must be signed by a person authorized by the corporate taxpayer to do so, and who is either,

007.01B(1) An officer of the corporate taxpayer,

007.01B(2) A person currently enrolled to practice before the Internal Revenue Service,

007.01B(3) An attorney or certified public accountant qualified to practice before the Internal Revenue Service under 5 U.S.C. 500 (1980).

007.01C When the time for filing the annual return is extended by the Department of Revenue or because of a federal extension, interest will be imposed at the rate specified in Section 45-104.02, from the due date of the return to the date paid if the tax ultimately assessed exceeds the tentative remittance. The interest is due on the amount by which the tax ultimately assessed exceeds the amount of tentative remittance.

007.01D Affiliated and unitary groups. A corporate taxpayer filing a combined return with the State of Nebraska must request an extension of time listing each corporation to be included in the combined return. The automatic extension (Form 7004N) shall include the name, address, and federal identification number of each corporation to be included in the combined return on the applicable schedule attached to Form 7004N.

007.01D(1) An automatic extension of time granted to the corporate taxpayer will not be applicable to any nonunitary member of an affiliated group filing a separate return with Nebraska.

007.01D(2) Any reference in this regulation to the term corporate taxpayer is intended to apply to any entity which is subject to the corporate income tax.

007.01E Each corporate taxpayer applying for an extension of time to file a return will be sent notice of the action taken by the Department of Revenue with respect to the application. The notice will be sent to the address specified by the applicant on the extension form.

007.02 Extensions of time for payment of tax. There will not be allowed any extension of time for payment of tax for a corporate taxpayer or any other entity which is taxed as a corporation, unless such a request is filed with, and specifically granted, by the Tax Commissioner. Upon request of the taxpayer, the Tax Commissioner may grant a reasonable extension of time for the payment of tax on or before the prescribed due date. Such an extension will be granted only upon a proper showing by the taxpayer that payment of the tax by the prescribed due date will result in undue hardship upon the taxpayer.

007.02A Any request for an extension of time by the taxpayer must be made prior to the prescribed due date for payment of the tax. Any extension granted by the Tax Commissioner for the payment of tax shall not exceed seven (7) months.

007.02B If an extension of time is granted for paying a tax, the Tax Commissioner may require the taxpayer to furnish a bond in any amount not exceeding double the amount of tax due or to furnish other security, approved in advance by the Tax Commissioner, for the payment of the tax on the date prescribed by the extension. If a bond is required, it must be filed with the Tax Commissioner within ten days after notice by the Tax Commissioner that a bond will be required. The bond must comply with the terms of the extension and must be approved by the Tax Commissioner in regard to form and content before it will be accepted as security by the Department of Revenue for the payment of tax.

007.02C If an extension of time for payment of a tax is granted, the tax shall be paid on or before the expiration of the period of the extension, together with interest at the rate specified in Section 45-104.02. Interest will be due on the tax payment from the original date prescribed for payment until the date the payment was actually made, regardless of any extension of time.

007.02D All applications for extension of time for payment of tax must be made to the Tax Commissioner and must contain a complete statement as to the reasons for the request.

(Section 77-2770, R.R.S. 1996. November 11, 1998.)

REG-24-008 CORPORATE INCOME TAX: RATE OF TAX

008.01 Entities which are subject to the corporation income tax are taxable upon the federal taxable income derived from or connected with sources within Nebraska. The tax rate for the entire taxable year shall be the rate in effect on the first day of the corporate taxpayer's taxable year.

008.01A corporate taxpayers on a fiscal year reporting basis shall use the tax rate in effect on the first day of the taxable period. Proration of varying tax rates in effect for different calendar years is not allowed.

008.01B For taxable years beginning after December 31, 1974, and before January 1, 1982, any entity subject to corporate income tax shall be subject to tax, at a rate equal to twenty-five percent of the rate imposed on individuals on the first twenty-five thousand dollars and twenty-seven and one-half percent of the rate imposed on individuals on any amount in excess of twenty-five thousand dollars.

008.01C For taxable years beginning on or after January 1, 1982 and before January 1, 1987, any entity subject to corporate income tax shall be subject to tax at a rate equal to twenty-five percent of the rate imposed on individuals on the first fifty thousand dollars and thirty-five percent of the rate imposed on individuals on any amount in excess of fifty thousand dollars.

008.01D For taxable years beginning on or after January 1, 1987, any entity subject to corporate income tax shall be subject to tax at a rate equal to one hundred fifty and eight-tenths per cent of the primary rate imposed on individuals on the first fifty thousand dollars of taxable income and at the rate of two hundred eleven per cent of the primary rate imposed on individuals on all taxable income in excess of fifty thousand dollars.

(Section, 77-2734.02, R.R.S. 1996. November 11, 1998.)

REG-24-009 Repealed.

REG-24-010 Repealed.

REG-24-011 Repealed.

REG-24-012 Repealed.

REG-24-013 Repealed.

REG-24-014 Repealed.

REG-24-015 SEPARATE ACCOUNTING

015.01 If a taxpayer is engaged in a multistate business and the income derived from within Nebraska is separate and distinct from the income derived without Nebraska pursuant to the requirements stated below, the taxpayer may request permission to separately account taxable income to Nebraska.

015.01A The books and records are kept by recognized accounting standards to accurately reflect the amount of income of the multistate business which was realized in Nebraska during the taxable period,

015.01B The business operations are separate and distinct and there are no interstate, intercompany, or interdivisional purchases, sales, or transfers during the period.

(Section 77-2734.15, R.S.Supp., 1984. December 4, 1984.)

REG-24-016 Repealed.

REG-24-017 Repealed.

REG-24-018 Repealed.

REG-24-019 Repealed.
REG-24-020 Repealed.
REG-24-021 Repealed.
REG-24-022 Repealed.

REG-24-023 APPORTIONMENT FORMULA

023.01 The federal taxable income, as adjusted, of a unitary business operating both within and without Nebraska shall be apportioned to this state by use of the apportionment formula set forth in section 77-2734.05 of the Nebraska Revised Statutes. The apportionment formula for tax years 1992 and thereafter consists of the sales factor (see Reg-24-035) of the trade or business of the taxpayer. A corporation, including an entity which has elected to file under Subchapter S of the Internal Revenue Code, engaged in business in Nebraska which is not subject to tax in another state does not apportion its income, but reports its entire taxable income to Nebraska.

(Sections 77-2734.05, and 77-2734.16, R.R.S. 2003, and section 77-2734.01, R.S.Supp., 2005. March 7, 2006.)

REG-24-024 PROPERTY FACTOR: IN GENERAL

024.01 The property factor of the apportionment formula shall include all real and tangible personal property owned or rented and used during the tax period. The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.

024.02 Property used in connection with the production of income that is not subject to apportionment shall be excluded from the property factor.

024.03 The property factor shall reflect the average value of property includable in the factor. See Reg-24-027.

(Sections 77-2901, Article IV, 9., R.R.S. 1943 and 2734.12, R.S.Supp., 1984. December 4, 1984.)

REG-24-025 PROPERTY FACTOR: PROPERTY USED

025.01 Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period (except inventorable goods in process) shall be excluded from the factor until such property is actually used. If the property is partially used while under construction, the value of the property to the

extent used shall be included in the property factor. Property used shall remain in the property factor until its permanent withdrawal is established by an identifiable event or the lapse of an extended period of time (normally, five years) during which the property is held for sale.

(Sections 77-2901, Article IV, 10., R.R.S. 1943 and 2734.12, R.S.Supp., 1984. December 4, 1984.)

REG-24-026 PROPERTY FACTOR: CONSISTENCY IN REPORTING

026.01 In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

026.02 If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under Sections 77-2734.04 to 77-2734.15, R.S.Supp., 1984 and Section 77-2901, Article IV, are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return of this state the nature and extent of the variance.

(Sections 77-2774, R.R.S. 1943 and 77-2734.09 through 77-2734.11, R.S.Supp., 1984. December 4, 1984.)

REG-24-027 PROPERTY FACTOR: NUMERATOR

027.01 The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or leased electronic equipment which is located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

(Sections 77-2901, Article IV, 10., R.R.S. 1943 and 2734.12, R.S.Supp., 1984. December 4, 1984.)

REG-24-028 PROPERTY FACTOR: VALUATION OF OWNED PROPERTY

028.01 Property owned shall be valued at its original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.

If original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer.

028.02 Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.

028.03 Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.
(Sections 77-2901, Article IV, 11., R.R.S. 1943 and 77-2734.12, R.S.Supp., 1984. December 4, 1984.)

REG-24-029 PROPERTY FACTOR: VALUATION OF RENTED PROPERTY

029.01 Property rented is valued at eight times its net annual rental rate. The net annual rental rate for any items of rented property is the annual rental rate paid for such property. Subrents are not deducted when the subrents constitute apportionable income.

029.02 "Annual rental rate" is the amount paid as rental for property for a 12 month period (i.e., the amount of the annual rent). Where property is rented for less than a 12 month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

029.03 "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, for the use of the property and includes:

029.03A Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

029.03B Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs, or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative value of the rent and other items.

"Annual rent" does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.

029.04 Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

(Sections 77-2901, Article IV, 11., R.R.S. 1943 and 77-2734.12, R.S.Supp., 1984. December 4, 1984.)

REG-24-030 PROPERTY FACTOR: AVERAGING PROPERTY VALUES

030.01 As a general rule the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the Tax Commissioner may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the property for the tax period.

030.02 Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

030.03 Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property as set forth in Reg-24-019.

(Sections 77-2901, Article IV, 12, R.R.S. 1943 and 77-2734.12, R.S.Supp., 1984. December 4, 1984.)

REG-24-031 PAYROLL FACTOR: IN GENERAL

031.01 The payroll factor of the apportionment formula shall include the total amount paid in the regular course of the trade or business for compensation during the tax period.

031.02 The total amount "paid" to employees is determined by the accounting method used. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under such method for unemployment compensation purposes.

031.03 The term "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of the board, rent, housing, lodging, and other benefits or services

furnished to employees by the taxpayer in return for personal services provided that such amounts constitute income to the recipient under the Internal Revenue Code. In the case of employees not subject to the Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the Internal Revenue Code.

031.04 The term "employee" means (a) any officer of a corporation or (b) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act; except that, since certain individuals are included within the term "employees" in the Federal Insurance Contributions Act who would not be employees under the usual common-law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this regulation.

031.05 In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

031.06 If the returns or reports filed with all states to which the unitary group reports under Sections 77-2734.09, R.S.Supp., 1984, are not uniform in the treatment of compensation paid, the return to this state shall disclose the nature and extent of the variance.

031.07 The payroll factor shall not include payroll used in the production of income that is not subject to apportionment.

(Sections 77-2734.09, and 77-2734.10, R.S.Supp., 1984. July 7, 1985.)

REG-24-032 PAYROLL FACTOR: DENOMINATOR

032.01 The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by Public Law 86-272 (15 U.S.C.A. ll 381-385), are included in the denominator of the payroll factor.

(Sections 77-2901, Article IV, 13., R.R.S. 1943 and 77-2734.13, R.S.Supp., 1984. December 4, 1984.)

REG-24-033 PAYROLL FACTOR: NUMERATOR

033.01 The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 77-2734.13, R.S.Supp., 1984, to be applied in determining whether compensation is paid in this state are derived from the

Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report such compensation under such method for employment compensation purposes, it shall be presumed that the total wages reported to this state for unemployment compensation purposes constitutes compensation paid in this state except for compensation excluded under Reg-24-031 to 24-035. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for employment compensation purposes.

(Section 77-2734.13, R.S.Supp., 1984. July 7, 1985.)

REG-24-034 PAYROLL FACTOR: COMPENSATION PAID IN THIS STATE

034.01 Compensation is paid in this state if any one of the following tests, applied consecutively, are met:

034.01A The employee's service is performed entirely within the state,

034.01B The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction,

034.01C If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

034.01C(1) If the employee's base of operations is in this state,

034.01C(2) If there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state,

034.01C(3) If the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

034.02 The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the employer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the employer.

(Sections 77-2901, Article IV, 14., R.R.S. 1943 and 77-2734.13, R.S.Supp., 1984. December 4, 1984.)

REG-24-035 SALES FACTOR: IN GENERAL

035.01 Section 77-2734.04(7) defines the term "sales" to mean all gross receipts of the taxpayer. The following are rules for determining "sales" in various situations:

035.01A In manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory if on hand at the close of the tax period) held primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

035.01B In cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost, plus the fee.

035.01C In providing services such as the operation of an advertising agency, or the performance of equipment service contracts, research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions, and similar items.

035.01D In renting real or tangible property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property.

035.01E In the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

035.01F Receipts from the sales of equipment used in the business constitute "sales".

035.02 In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See Reg-24-040.

035.03 In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the return for the current year shall disclose the nature and extent of the modification.

035.04 If the returns or reports filed with all states to which the unitary group reports under Sections 77-2734.04 to 77-2734, R.S.Supp., 1984, and 77-2901, Article IV, 1. to 18. are not uniform in the inclusion or exclusion of gross receipts, the return to this state shall disclose the nature and extent of the variance.

035.05 The sales factor shall not include any sales made in the production of income that is not subject to apportionment.

(Sections 77-2774, and 77-2734.14, R.S.Supp., 1984. July 7, 1985.)

REG-24-036 SALES FACTOR: DENOMINATOR

036.01 The denominator of the sales factor shall include the total gross receipts derived by the taxpayer except receipts excluded under Reg-24-040.

(Section 77-2734.14, R.S.Supp., 1984. July 7, 1985.)

REG-24-037 SALES FACTOR: NUMERATOR

037.01 The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer. All interest income, service charges, carrying charges, or time price differential charges incidental to such gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(Sections 77-2901, Article IV, 15., R.R.S. 1943 and 77-2734.14, R.S.Supp., 1984. December 4, 1984.)

REG-24-038 SALES FACTOR: SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE

038.01 For tax years 1997 and thereafter, gross receipts from sales of tangible personal property (except sales to the United States Government; see Reg-24-039) are in this state if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale.

038.02 Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

038.03 Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

038.04 The term purchaser within this state shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

038.05 When property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in this state, the sales are in this state.

038.06 All mailing lists and prospect lists are considered tangible personal property, even when delivered to the customer in an electronic format. Sales of mailing lists and prospect lists are deemed to be in this state in the same manner as sales of any other tangible personal property.

(Section 77-2734.14, R.R.S. 2003; and *ABI v. Egr*, 264 Neb. 574 (2002) . March 7, 2006.)

REG-24-039 SALES FACTOR: SALES OF TANGIBLE PERSONAL PROPERTY TO UNITED STATES GOVERNMENT IN THIS STATE

039.01 Gross receipts from sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For the purposes of this regulation, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States Government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government.

(Sections 77-2901, Article IV, 16.(b), R.R.S. 1943 and 77-2734.14, R.S.Supp., 1984. December 4, 1984.)

REG-24-040 SALES FACTOR: SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE

040.01 In general. Sections 77-2734.14, R.S.Supp., 1984, and 77-2901, Article IV, 17., R.R.S. 1943 provide for the inclusion in the numerator of the sales factor gross receipts from transactions other than the sales of tangible personal property (including transactions with the United States Government); under this section gross receipts are attributed to this state if the income-producing activity which gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income-producing activity is performed within and without this state but the greater proportion of the income-producing activity is performed in this state, based on costs of performance.

040.02 Income-producing activity: defined. The term "income-producing activity" applies to each separate item of income and means the transactions and activities directly engaged in for the ultimate purpose of obtaining gains or profit. Such activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, income-producing activity includes but is not limited to the following:

040.02A The rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service,

040.02B The sale, rental, leasing, licensing or other use of real property,

040.02C The rental, leasing, licensing or other use of tangible property,

040.02D The sale, licensing, or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income-producing activity.

040.03 Costs of performance: defined. The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

040.04 Application.

040.04A In general. Receipts (other than from sales of tangible personal property) in respect to a particular income-producing activity are in this state if:

040.04A(1) The income-producing activity is performed wholly within this state,

040.04A(2) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

040.04B Special rules. The following are special rules for determining when receipts from the income-producing activities described below are in this state:

040.04B(1) Gross receipts from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.

040.04B(2) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing, or other use of tangible personal property in this state is a separate income-producing activity from the rental, lease, licensing, or other use of the same property while located in another state; consequently, if property is within and without this state during the rental, lease, or licensing period, gross receipts attributable to this state shall be measured by the ratio which the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during such period.

040.04B(3) Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of such services shall be attributable to this state if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly without this state the services performed in each state will constitute a separate income-producing activity; in such case the gross receipts for the performance of services attributable to this state shall be measured by the ratio which the time spent in performing such services in this state bears to the total time spent in performing such services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for

example, time expended in negotiating the contract, is excluded from the computations.

(Sections 77-2901, Article IV, 17., R.R.S. 1943 and 77-2734.13 and 77-2734.14, R.S.Supp., 1984. December 4, 1984.)

REG-24-041 Repealed.

REG-24-042 Repealed.

REG-24-043 Repealed.

REG-24-044 METHODS OF ACCOUNTING

044.01 In computing the Nebraska corporate income tax, the method of accounting must be the same as the method used for federal income tax purposes.

(Sections 77-2760, and 77-2772, R.R.S. 1943. December 4, 1984.)

REG-24-045 PARTIAL-YEAR RETURNS

045.01 A return for a short period, that is, for a taxable year consisting of a period of less than 12 months, shall be made under any of the circumstances described in Section 443 of the Internal Revenue Code of 1986. The regulations under Section 443 should be followed in filing a short period return.

045.02 Any corporate taxpayer that can determine that the method of computing income under Section 443 does not closely reflect such short period income, and has records of income, deductions, or credits which are sufficient to establish the short period tax liability accurately, may request permission to use an alternative method of reporting income. However, any alternative method of reporting income must have prior written approval by the Tax Commissioner.

(Sections 77-2734.02, 77-2734.04 and 77-2734.15, R.R.S. 1996. November 11, 1998.)

REG-24-046 ADJUSTMENTS OF FEDERAL INCOME TAX

046.01 Any changes made by the Internal Revenue Service in the federal taxable income of a corporate taxpayer, a member of a unitary group, or the unitary group must be reported to the Nebraska Department of Revenue within ninety (90) days of the final determination of the change. Reportable changes include changes made to the federal return by either the Internal Revenue Service Processing Center or any other Internal Revenue Service office.

046.01A In reporting any change to federal taxable income, the Tax Commissioner must be furnished complete information regarding the amount of income reported and taxes

paid to the United States. The report must also concede the accuracy of the final determination or give a statement outlining the specific errors of the final determination.

046.02 Any adjustments made on federal amended returns which do not result in a federal refund or credit must be reported to the Nebraska Department of Revenue within ninety (90) days of the filing of the federal amended return. Any adjustments made on federal amended returns which result in a federal credit or refund must be reported to the Nebraska Department of Revenue within ninety (90) days of the taxpayer's receipt of proof that the federal credit or refund was accepted by the Internal Revenue Service or within any other applicable period provided by law, whichever is later.

046.02A Adjustments made on a federal amended return or by the Internal Revenue Service shall be reported to the Tax Commissioner by filing an Amended Nebraska Corporation Income Tax Return, Form 1120XN, for the taxable year involved. The amended return for Nebraska must include copies of the federal amended return, Internal Revenue Service report, or other document which substantiates the adjustments claimed.

046.03 Each amended return for Nebraska must be filed separately and should not be attached to a return for another taxable year. Payment of any additional tax must accompany the amended return.

046.04 For the purpose of determining when adjustments in federal income tax constitute a final determination, the following acts will be considered to be a final determination:

046.04A A decision by the tax court or a judgment, decree, or other order by a court of competent jurisdiction which has become final ;

046.04B A closing agreement authorized by Section 7121 of the Internal Revenue Code which relates either to the total tax liability for a particular taxable year or years or to one or more separate items affecting the Nebraska tax liability. A closing agreement becomes final for purposes of this regulation on the date of its approval by the Internal Revenue Service ;

046.04C The final disposition by the Internal Revenue Service of a claim for a refund ;

046.04D Any informal agreement between the corporate taxpayer or a member of a unitary group and the Internal Revenue Service made for the express purpose of serving as a determination in respect to tax liability of the taxpayer. Such an agreement must include a waiver of restrictions on assessment and the collection of any deficiencies resulting from the agreement ;

046.04E The acceptance of an examining officer's findings in regard to the income of a partnership, a fiduciary, or a limited liability company ;

046.04F The payment of any additional tax by the corporate taxpayer or unitary group ;
or

046.04G Any other final judgment effecting changes in reported federal taxable income.

046.05 If a taxpayer fails to report any change or correction which increases its federal tax liability, or fails to report any change or correction which is treated as a deficiency for federal income tax purposes, or fails to file an amended Nebraska return, the Tax Commissioner may mail to the taxpayer a notice of deficiency at any time. If a taxpayer properly reports any change in its federal tax liability, the Tax Commissioner may make an assessment relating to the change at any time within two (2) years after the report or amended return was filed.

046.06 The amended return reporting a change that results in an overpayment of tax for Nebraska is a claim for credit or refund.

046.06A The amount of the credit or refund shall not exceed the amount of the Nebraska tax attributable to such federal change, correction, or the items amended on the federal return.

046.06B If the amended return is not filed within ninety days of the final determination of the change, interest shall not accrue after the ninetieth day.

046.06C If the amended return is not filed within two years and ninety days from the final determination of the change, no credit or refund shall be granted.

(Section 77-2793(4), R.R.S. 2003, and sections 77-2775 and 77-2786(4), and (5), R.S.Supp., 2005. March 7, 2006.)

REG-24-047 RECORDS

047.01 In general. Any corporate taxpayer that conducts business within this state, makes deliveries or sales into this state, or has sales or service representatives operating in this state and any corporate taxpayer subject to tax under the Nebraska Revenue Act of 1967, as amended, shall keep such permanent books of account or records, including inventories and all supporting documents, as are sufficient to establish the amount of gross income, deductions, credits, or other matters which may be required to support the Nebraska corporation income tax return.

047.02 Availability of books and records. Such books or records shall be kept available at all times for inspection by the Tax Commissioner or any agent or representative designated by the Tax Commissioner for the purpose of ascertaining the correctness of any return or other document required to be filed under the Nebraska Revenue Act, or for the purpose of ascertaining whether a corporate taxpayer is subject to the corporation income tax.

047.03 Retention of records. Each corporate taxpayer or unitary group shall retain all of its records relating to a taxable year as long as the contents may become material in the administration of any Nebraska tax laws. If the Tax Commissioner serves a notice of deficiency determination for a taxable year, the corporate taxpayer or the unitary group shall retain all of its records relating to that taxable year until the deficiency has been satisfied, abated, settled, or disallowed.

(Section 77-27,119(3), R.S.Supp., 1998, and section 77-2772, R.R.S. 1996. November 11, 1998.)

REG-24-048 INCOME FROM UNITED STATES GOVERNMENT OBLIGATIONS

048.01 Interest or dividend income from obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States shall be subtracted from federal taxable income to the extent such income is includable in federal gross income, but exempt from state income taxes pursuant to federal law.

048.02 The amount subtracted shall be reduced by any interest on indebtedness incurred to carry the obligations described above, and by any expenses incurred in the production of the interest or dividend income derived from such obligations to the extent that such expenses are deductible in determining federal taxable income.

048.03 A corporate taxpayer may not elect to forego the deduction set forth in paragraph 048.01 or the adjustments set forth in paragraphs 048.02 and 048.04.

048.04 Investment interest expense shall be determined by (a) dividing the taxpayer's average investment in exempt securities by the taxpayer's average total assets and multiplying such ratio by the taxpayer's total interest expense and (b) subtracting from the result of (a) any interest disallowed under 26 U.S.C.A. §§ 265 and 291.

048.05 As used in this regulation, unless the context requires otherwise:

048.05A Exempt securities shall mean the obligations that earn income exempt from taxation under section 048.01 of this regulation or under 26 U.S.C. § 103;

048.05B Average investment in exempt securities shall mean the average of the aggregate tax bases in exempt securities at the beginning and at the end of the taxable year;

048.05C Average total assets shall mean the average of the aggregate tax bases in total assets at the beginning and at the end of the taxable year; and

048.05D Total interest expense shall mean the total interest expense allowed as a deduction in computing federal taxable income plus any interest disallowed under 26 U.S.C.A. §§ 265 and 291.

048.06 The State Tax Commissioner may permit or require the use of amounts from interim balance sheets to compute the ratio of investment in exempt securities to total assets whenever it is necessary to properly reflect such ratio.

048.07 When determining the computation in section 048.04 of this regulation, the taxpayer may use, in lieu of tax basis, the amounts from a balance sheet included with the federal return or as required to be reported to federal or state regulatory agencies if (a) such amounts are not materially different from tax basis, (b) the amounts are prepared consistently from year to year, and (c) absent a change in circumstances, the amounts are consistently used by the taxpayer from year to year. The State Tax Commissioner may require a taxpayer to use these alternative

amounts when necessary to maintain consistency and may also require the taxpayer to show that the amounts used do not materially differ from the tax basis.

048.08 United States Government interest and dividend income that is exempt from state taxation includes the following:

048.08A Series E, F, G, and H savings bonds;

048.08B United States Treasury bills;

048.08C U.S. Government notes;

048.08D U.S. Government bonds;

048.08E U.S. Government certificates;

048.08F Interest on debentures issued to mortgages of mortgagees foreclosed under provisions of the National Housing Act if insured after February 3, 1938;

048.08G Retirement bond as provided by I.R.C. section 409;

048.08H Federal Farm Credit Bank Consolidated System wide bonds;

048.08I Federal Land Banks and Associations;

048.08J Federal Intermediate Credit Bank;

048.08K Commodity Credit Corporation;

048.08L Federal Farm Mortgage Corporation;

048.08M Federal Home Loan Banks;

048.08N Reconstruction Finance Corporation;

048.08O General Services Administration Participation Certificates;

048.08P Central Bank for Cooperatives (interest only);

048.08Q Federal Reserve Banks;

048.08R Federal Savings and Loan Insurance Corporation;

048.08S Production Credit Association (interest only);

048.08T Tennessee Valley Authority bonds;

048.08U Postal Service Bonds;

048.08V Federal Deposit Insurance Corporation (interest only);

048.08W Student Loan Marketing Association (interest only);

048.08X Resolution Trust Corporation;

048.09 Interest from repurchase agreements involving federal securities is not exempt and is subject to Nebraska income tax.

048.10 Gains and losses from the sale or other disposition of federal securities, as distinguished from interest income, are taxable for state income tax purposes.

048.11 Dividends and other income received from a regulated investment company are excluded to the extent they represent U.S. Government interest and dividend income included above.

(Section 77-2716, R.S.Supp., 1998. Nebraska Department of Revenue v. John Loewenstein, 513 U.S. 123 (1994). November 11, 1998.)

REG-24-049 SPECIAL RULES: AIRLINES

049.01 The following special rules are established with respect to airlines:

049.01A In general. When an airline has income from sources both within and without this state, the amount of taxable income from sources within this state shall be determined pursuant to corporation income tax regulations except as modified by this regulation.

049.01B Apportionment of taxable income.

049.01B(1) General definitions. The following definitions are applicable to the terms used in the apportionment factor descriptions.

049.01B(1)(a) Cost of aircraft by type means the average original cost or value of aircraft by type which are ready for flight.

049.01B(1)(b) Original cost means the initial federal tax basis of the property plus the value of capital improvements to such property, except that, for this purpose, it shall be assumed that Safe Harbor Leases are not true leases and do not affect the original initial federal tax basis of the property.

049.01B(1)(c) The value of rented real and tangible personal property means the product of eight (8) times the net annual rental rate.

049.01B(1)(d) Net annual rental rate means the annual rental rate paid by the taxpayer.

049.01B(1)(e) Aircraft ready for flight means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.

049.01B(1)(f) Revenue service means the use of aircraft ready for flight for the production of revenue.

049.01B(1)(g) Transportation revenue means revenue earned by transporting passengers, freight, and mail as well as revenue earned from liquor sales, pet crate rentals, etc.

049.01B(1)(h) Departures means for purposes of these regulations all takeoffs, whether they be regularly scheduled or charter flights, that occur during revenue service.

049.01B(2)Sales (transportation revenue) factor. The transportation revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, etc., are included in the denominator of the revenue factor. Passive income items such as interest, rental income, dividends, etc., will not be included in the denominator nor will the proceeds or net gains or losses from the sale of aircraft be included. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year is the result of the following calculation:

The ratio of departures of aircraft in this state weighted as to the cost and value of aircraft by type as compared to total departures similarly weighted multiplied by the total transportation revenue. The product of this calculation is to be added to any nonflight revenues directly attributable to this state.

049.01C Records. The taxpayer must maintain the records necessary to arrive at departures by type of aircraft as used in these regulations. Such records are to be subject to review by the State Tax Commissioner or any agent or representative designated by the State Tax Commissioner.

(Sections 77-2734.14, 77-2734.15, and 77-2734.16 R.R.S. 1996. November 11, 1998.)

REG-24-050 INCOME FROM U.S. GOVERNMENT OBLIGATIONS--TAX YEARS BEGINNING PRIOR TO JANUARY 1, 1983.

050.01. Corporations may adjust federal taxable income for interest or dividend income from certain U.S. government obligations.

050.01A The adjustment is for income from those obligations of the United States government and its territories and possessions or any authority, commission, or

instrumentality of the United States which a state is specifically prohibited from taxing under federal law.

050.01B If the owner of the United States government obligations is a member of an affiliated group of corporations, the adjustment will be made only from the taxable income of the owner of the U.S. government obligations.

050.02 Because of a federal prohibition of discrimination against United States government obligations, no offset against the adjustment in section 050.01 is required for interest or other expenses incurred in acquiring or carrying U.S. government obligations.

(Section 77-2716, R.R.S. 1943 (Reissue, 1981), Section 77-2734, R.R.S. 1943, **Douglas v. Karnes**, 216 Neb. 750, N.W.2d 1984. July 21, 1984.)

REG-24-051 DOMESTIC INTERNATIONAL SALES CORPORATIONS

051.01 If a group of corporations includes a domestic international sales corporation or other entity accorded similar treatment under the Internal Revenue Code, the income of the group shall include only that portion of the domestic international sales corporation that is considered to be a dividend to the parent.

051.02 The sales to the domestic international sales corporation shall be eliminated.

051.03 The domestic international sales corporation's property, payroll, and sales shall be included in the factors to the extent of the ownership of the rest of the group.

051.04 There shall be no adjustment to the factors when the deferred income is realized by the parent.
(Section 77-2734.08, R.S.Supp., 1984. July 7, 1985.)

REG-24-052 FOREIGN DIVIDEND DEDUCTION

052.01 Corporate taxpayers shall deduct from federal taxable income dividends received or deemed to be received from corporations which are not subject to the Internal Revenue Code.

052.02 Subject to the Internal Revenue Code means those corporations that meet the requirements of Internal Revenue Code section 243 in order for their distributions to qualify for the dividends received deduction.

(Section 77-2716(7), R.S.Supp., 1998, and section 77-2734.04(10), R.R.S. 1996. November 11, 1998.)

REG-24-053 COMBINED INCOME APPROACH

053.01 Any unitary business having income from business activity that is taxable both within and without Nebraska shall determine its taxable income by multiplying its federal taxable income, as adjusted, by a fraction which is the sales factor.

053.02 The combined income approach is the computation of combining the taxable income of a business conducted as a single economic unit. The Nebraska net income of a corporate taxpayer will be determined by applying the taxpayer's apportionment formula against the combined income of the unitary group.

053.02A Income attributable to Nebraska is determined by multiplying the income of the unitary group by the apportionment factor.

053.02B The apportionment factor is the sales factor of the corporate taxpayer.

053.03 When a unitary group includes two or more corporations engaged in a unitary business, a part of which is conducted in Nebraska by one or more members of the unitary group, the income of the corporate taxpayer apportioned to Nebraska is determined by calculating the ratio of the corporate taxpayer's sales in Nebraska compared to the total sales of the entire unitary group and by applying the computed ratio to the unitary group's federal taxable income, as adjusted.

053.03A In the computation of the factors, only the part of the unitary group that is subject to the Internal Revenue Code shall be included.

053.03B. Only those corporations subject to federal income tax under §243 of the Internal Revenue Code are included in a corporate taxpayer's filing.

053.03C Only the sales of those corporations with nexus in Nebraska are included in the numerator of the computed apportionment factor.

053.04 Each corporate taxpayer must file only one income tax return for the group for each taxable year, even if more than one member of the unitary business is taxable in Nebraska.

053.05 Any corporation that is required or has received permission to use an alternative apportionment formula cannot be included in the unitary group.

053.05A If more than one affiliated or related company of a unitary group is properly using the same special apportionment formula, such companies must use the combined income approach and must file a single Nebraska Corporation Income Tax Return, Form 1120N.

053.06 Inactive corporations may not be included in the unitary group.

053.07 A corporate taxpayer which is a part of a unitary group that includes a partner in a joint venture or partnership with which a member of a unitary group is unitary except for the ownership requirement will compute its Nebraska taxable income in accordance with Reg-24-056.

(Section 77-2734.05 and 77-2734.14, R.R.S. 1996. November 11, 1998.)

REG-24-054 SINGLE RETURN FILING REQUIREMENT

054.01 Each corporate taxpayer shall only file one state income tax return for each taxable year.

054.02 This requirement exists whether or not the taxpayer files a consolidated federal tax return or is considered a controlled group of corporations under the Internal Revenue Code.

(Section 77-2734.02(3), R.S.Supp., 1984. July 7, 1985.)

REG-24-055 INCOME NOT SUBJECT TO APPORTIONMENT

055.01 The entire federal taxable income of a unitary business operating both within and without this state is presumed to be subject to apportionment.

055.01A Other than for adjustments required to be made under the Nebraska Revenue Act of 1967, for any income that is claimed to be not subject to apportionment, a corporate taxpayer needs to show by a preponderance of the evidence that the income is not part of the unitary business and that the taxpayer has not claimed that the same income is part of the unitary business and subject to apportionment in another state with substantially the same law on apportionability of income.

055.02 There shall be subtracted from federal taxable income any income that the taxpayer has shown is not subject to apportionment under this regulation. The amount subtracted under this paragraph shall be reduced, but not below zero, by a portion of the interest expense as determined under paragraph 055.03 and any expense incurred in the production of the income described in this regulation.

055.03 The interest expense for the reduction required in paragraph 055.02 shall be determined by dividing the taxpayer's average investment in the activities producing the income by the taxpayer's average total assets and multiplying such ratio by the total interest deduction allowed in the computation of federal taxable income.

055.04 For the purposes of this regulation, investment in activities producing the income described in paragraph 055.03 shall mean the tax basis of the assets, both tangible and intangible, that are used in the activities or are the basis of the receipt of the described income.

055.05 Whenever it is necessary to properly reflect the ratio of the average investment in activities producing the income not subject to apportionment to the average total assets, the State Tax Commissioner may permit or require the computation of the averages provided for in this paragraph using amounts from interim balance sheets.

055.06 The taxpayer may use, in lieu of the tax basis for the computation in paragraph 055.04, the amounts from an income statement included with the federal return or as required to

be reported to federal or state regulatory agencies if (a) such amounts are not materially different from tax basis, (b) the amounts are prepared consistently from year to year, and (c) absent a change in circumstances, the amounts are consistently used by the corporation from year to year. The State Tax Commissioner may require a corporate taxpayer to use the alternative amounts in order to maintain consistency or may require the corporate taxpayer to show that the amounts used do not materially differ from the tax basis.

(Section 77-2716(5) and (6), R.S.Supp., 1998, and section 77-2734.06, R.R.S. 1996. November 11, 1998.)

REG-24-056 CORPORATION AS PARTNER IN A PARTNERSHIP OR JOINT VENTURE

056.01 When a partnership has sufficient contacts with a corporate partner such that it would be considered unitary if it was a corporation that was at least 50 percent owned by that partner then the partnership will be considered unitary with the corporate partner regardless of the actual ownership share of the partner.

056.01A This determination will have to be made separately for each partner and will be based on the requirements of Reg-24-053.

056.02 When a corporation and a partnership are considered unitary, the apportionment factors of the corporation will be adjusted to include a portion of the sales factor of the partnership. The percentage of the sales factor included will be the percentage of profits or losses of that corporation. The percentage will be applied to each denominator and each state's numerator equally.

056.03 Intercompany transactions will be eliminated. The elimination of intercompany transactions will be based on the percentage of the ownership of the corporation, except all sales from the partnership to the corporation will be eliminated to the extent of the corporation's share of total sales of the partnership. If all of the sales from the partnership to the corporation are not eliminated, the remaining sales in each state will be the same percentage of the sales in the state before any eliminations. Any partnership agreements that identify particular activities to a specific partner will be given no effect in the determination of the income of each partner subject to tax in Nebraska.

056.04 Example. (Illustration only.) X multistate corporation is domiciled outside Nebraska and is a partner in AX, a multistate partnership. X has a 40 percent interest in the profits or losses of AX. X and AX are unitary, not considering the attribute of ownership. Corporation X has sales of \$10,000,000, \$1,000,000 of which were to Partnership AX. Partnership AX has sales of \$2,000,000, \$900,000, of which were to Corporation X. Corporation X has apportionable income of \$3,000,000, exclusive of its interest in AX's income, and Partnership AX has apportionable income totaling \$500,000.

056.05 The denominator to be used in a combined report of income with the corporate return is calculated as follows:

Corporation X	Sales
Partnership AX	\$10,000,000.
Less intercompany sales eliminations:	800,000. *
Corporation X sales to AX	
(\$1,000,000 x 40% ownership interest)	(400,000)
Partnership AX sales to Corporation X,	
\$900,000, limited to 40% ownership	
interest of \$2,000,000 total sales,	(800,000)
Totals	\$9,600,000

*\$2,000,000 x 40% = \$800,000

056.06 The expanded apportionment factor will be applied to the apportionable income of Corporation X calculated as follows:

Apportionable income:

	Corporation X	\$ 3,000
	Partnership AX: \$500,000 x 40% ownership interest	200,000
Combined apportionable taxable income	(equals Corporation X's total federal taxable income)	<u>\$ 3,200</u>

056.07 When a corporation engages in a partnership with which it is unitary as defined above, its apportionment formula shall be determined in accordance with this regulation.

(Sections 77-2734.14, 77-2734.15 and 77-2734.16, R.R.S. 1996. November 11, 1998.)

REG-24-057 TAXABLE IN ANOTHER STATE

057.01 A corporate taxpayer is taxable in another state if that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether in fact the state does or does not do so.

057.02 The failure to provide upon request of the State Tax Commissioner a copy of the return filed together with proof of payment of a net income tax imposed by another state creates a rebuttable presumption that the taxpayer is not subject to tax in the other state.

(Section 77-2734.11, R.S.Supp., 1984. July 7, 1985.)

REG-24-058 DEFINITIONS

058.01 Commercial domicile shall mean the principal place from which the trade or business of the taxpayer is directed or managed.

058.02 Compensation shall mean wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

058.03 Corporate taxpayer shall mean any corporation that is not a part of the unitary business or the part of the unitary business, whether it is one or more corporations, that is doing business in the state. Corporate taxpayer shall not include any corporation that has made a valid election under subchapter S of the Internal Revenue Code.

058.04 Corporation shall mean all corporations and all other entities taxed as corporations under the Internal Revenue Code.

058.05 Doing business in this state shall mean the exercise of the corporation's franchise in this state or the conduct of operations in this state that exceed the limitations provided in 15 U.S.C. 381 on a state imposing an income tax.

058.06 Federal taxable income shall mean the corporate taxpayer's federal taxable income as reported to the Internal Revenue Service, or as subsequently changed or amended. Except for the deduction for foreign dividends or dividends deemed to be received from corporations which are not subject to the Internal Revenue Code, no adjustment shall be allowed for a change from any election made or the method used in computing federal taxable income.

058.07 Sales shall mean all gross receipts of the taxpayer.

058.08 Single economic unit shall mean a business where there is a sharing or exchange of value between the parts of the unit. A sharing or exchange of value occurs when the parts of the business are linked by common management, or common operational resources that produce material (a) economies of scale, (b) transfers of value, or (c) flow of goods, capital or services between the parts of the unit.

058.08A Common management includes, but is not limited to, a centralized executive force or review or approval authority over long-term operations with or without the exercise of control over the day-to-day operations.

058.08B Common operational resources include, but are not limited to, centralization of any of the following: accounting, advertising, engineering, financing, insurance, legal, personnel, pension or benefit plans, purchasing, research and development, selling, or union relations.

058.09 State shall mean any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

058.10 Subject to the Internal Revenue Code shall mean a corporation that meets the requirements of Internal Revenue Code section 243 in order for its distributions to qualify for the dividends received deduction.

058.11 Taxable income shall mean federal taxable income as adjusted, and, if appropriate, as apportioned.

058.12 Taxable year shall mean the period the corporate taxpayer used on its federal income tax return.

058.13 Unitary business shall mean a business that is conducted as a single economic unit by one or more corporations with common ownership and shall include all activities in different lines of business that contribute to the single economic unit.

058.13A Common ownership shall mean one or more corporations owning fifty percent or more of another corporation.

058.14 Unitary group shall mean the group of corporations that are conducting a unitary business.

(Section 77-2734.04, R.S.Supp., 1984. July 7, 1985.)

REG-24-059 SPECIAL RULES: TRUCKING COMPANIES

059.01 The following special rules are established with respect to trucking companies:

059.01A In general. When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this regulation.

059.01B Apportionment of taxable income.

059.01B(1) General definitions. The following definitions are applicable to the terms used in the apportionment factor descriptions:

059.01B(1)(a) Trucking company means a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation.

059.01B(1)(b) Transportation revenue means revenue derived from hauling freight, mail and express.

059.01B(1)(c) Mobile property means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

059.01B(1)(d) Mobile property mile is the movement of a unit of mobile property a distance of one mile, whether loaded or unloaded.

059.01B(2) Sales Factor

059.01B(2)(a) The gross receipts of the taxpayer, other than transportation revenue, shall be included in the sales factor numerator in accordance with Reg-24-036 through Reg-24-040. The transportation revenue from any shipment which both originates and terminates within this state shall be

included in the numerator. The transportation revenue from movements of shipments passing through, into or out of this state shall be included in the numerator on the basis of the ratio which the mobile property miles traveled by such movements or shipments in this state bear to the total mobile property miles traveled by movements or shipments from points of origin to destination.

059.01C Unitary Group. A trucking company can be included in a unitary group with companies which are not trucking companies.

059.02 Records. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by such mobile property as those terms are used in this regulation. Such records are subject to review by the Department of Revenue or its agents.

(Section 77-2734.15, R.R.S. 1996. November 11, 1998.)

REG-24-060 NET OPERATING LOSSES AND CAPITAL LOSSES

060.01 Any deduction for a federal net operating loss or capital loss shall be an adjustment increasing federal taxable income in order to compute Nebraska taxable income.

060.01A Where Nebraska taxable income is computed by apportionment, such adjustment shall be made prior to apportionment.

060.02 There shall be allowed as a deduction in computing Nebraska taxable income a carryforward of a Nebraska net operating loss computed on the basis of this regulation.

060.02A A Nebraska net operating loss for a corporate taxpayer that is not subject to apportionment shall be the amount of net operating loss after the adjustments have been made to the federal taxable income of the corporate taxpayer.

060.02B A corporate taxpayer who is required to apportion its income to Nebraska shall compute its Nebraska net operating loss in the following manner:

060.02B(1) Nebraska adjustments shall be made to the federal taxable income or net operating loss of the unitary group prior to apportionment.

060.02B(2) The federal net operating loss as adjusted is apportioned to Nebraska based on the apportionment factor of the corporate taxpayer for the year of the loss.

060.03 For tax years beginning on or after January 1, 1987, the Nebraska net operating loss may be allowed as a deduction in computing Nebraska taxable income for each of the five taxable years following the year of the loss. For Nebraska net operating losses incurred prior to tax years beginning prior to January 1, 1987, the periods in which the Nebraska net operating loss may be deducted shall be in accordance with the federal rules for such periods.

060.04 The carryforward of Nebraska net operating losses after reorganizations or mergers is limited to the same extent as the carryover of a net operating loss is limited under the provisions of sections 381 through 384 of the Internal Revenue Code and regulations thereunder or any other section of the Internal Revenue Code or regulations thereunder. Where the taxpayer files as a part of a consolidated income tax return for federal income tax purposes, but a separate return for Nebraska income tax purposes, the limitation on an Nebraska net operating loss carryforward must be determined as though a separate income tax return was filed for federal income tax purposes.

060.05 In addition to the limitations contained in paragraph 060.04 an additional limitation is imposed where a corporation which has a Nebraska operating loss carryforward becomes a member of a unitary group in a year in which such carryforward is still available. The net operating loss carryforward deduction shall not exceed the apportionable income of the unitary group times a fraction, the numerator of which is the Nebraska gross receipts of such corporation and the denominator is the gross receipts of the unitary group.

060.06 There shall be allowed a deduction in computing Nebraska taxable income a carryforward of a Nebraska capital loss computed on the basis of this regulation.

060.06A A Nebraska capital loss for a corporate taxpayer that is not subject to apportionment shall be the amount of capital loss after the adjustments have been made to the federal capital gain or loss of the corporate taxpayer.

060.06B A corporate taxpayer who is required to apportion its income to Nebraska shall compute its Nebraska capital loss in the following manner.

060.06B(1) Nebraska adjustments should be made to the federal capital gain or loss of the unitary group prior to apportionment.

060.06B(2) The federal capital loss as adjusted is apportioned to Nebraska based on the apportionment factor of the corporate taxpayer for the year of the capital loss.

060.07 For any Nebraska capital loss incurred in tax years beginning on or after January 1, 1987, the Nebraska capital loss may be allowed against any Nebraska capital gain for each of the five taxable years following the year of the capital loss. For Nebraska capital losses incurred in tax years beginning prior to January 1, 1987, the periods in which the Nebraska capital loss may be deducted shall be in accordance with federal rules for such loss year.

(Section 77-2734.07, R.R.S. 1996. November 11, 1998.)

REG-24-061 INSURANCE COMPANIES

061.01 Special Apportionment Formula. When an insurance company has income from sources both within and without this state the amount of business income from sources within this state shall be determined pursuant to the special apportionment formula provided in this regulation.

061.01A General Definitions. The following definitions are applicable to the terms used in the apportionment factor descriptions:

061.01A(1) Insurance company means a company engaged in the business of insurance as defined in Neb. Rev. Stat. Section 44-102.

061.01A(2) Schedule T is part of the annual statement prescribed by the National Association of Insurance Commissioners, which is required to be filed annually with the various state insurance departments.

061.01A(3) Quota-share reinsurance is reinsurance of a certain percentage of all or certain parts of the business of the reinsured.

061.01A(4) Premiums shall mean the consideration paid to insurance companies for insurance and shall include policy fees, assessments, dues or other similar payments (except premiums on all annuity contracts and pension, profit-sharing, individually sponsored retirement plans, and other pension plan contracts which are described in section 818(a) of the Internal Revenue Code).

061.01A(5) Direct premiums shall mean all premiums received for insurance other than reinsurance premiums.

061.01A(6) Reinsurance premiums shall mean premiums which are paid by an insurer to a third party to insure it against loss or liability by reason of such original insurance.

061.01B Sales Factor

061.01B(1) The numerator of the sales factor of an insurance company or a unitary group of insurance companies shall consist of direct premiums received on property or risks in Nebraska and the denominator of which is direct premiums received on property or risks everywhere. Premiums for reinsurance are not included except as provided in paragraph 061.01B(2).

061.01B(2) Reinsurance premiums are included in the sales factor when more than one-third of the premiums received by an insurance company or a unitary group of insurance companies consist of premiums received for reinsurance accepted. All transactions between corporate members of the same unitary group are eliminated prior to making the determinations outlined in this regulation.

061.01B(2)(a) Premiums received for reinsurance accepted will be sourced to Nebraska if it can be established or reasonably be assumed that the underlying risks are in Nebraska. In the case of reinsurance accepted for which the location of the underlying risk can neither be established nor reasonably assumed, premiums received will be sourced to the state of commercial domicile of the ceding company with the following exception. If more than half of the ceding company's premiums written are direct premiums, reinsurance premiums received with respect to quota-share

shall be sourced in proportion to the ceding company's Annual Statement
-- Schedule T allocation of its direct premiums written.

061.01C Unitary Group. An insurance company cannot be included in a unitary group when the other members of the unitary group are not insurance companies. A unitary group of insurance companies cannot include a corporation that is not an insurance company.

061.02 Credits for Taxes on Premiums and Assessments. An insurance company may receive a nonrefundable credit against its corporation income tax for taxes on premiums and assessments paid to the Nebraska Department of Insurance pursuant to the sections 77-908 and 81-523.

061.02A For taxable years beginning on or after January 1, 1997, an insurance company shall only receive a credit for taxes paid on premiums and assessments to the extent that the premiums were received on property or risks in Nebraska.

061.02B An insurance company may receive a nonrefundable credit for assessments paid to the Comprehensive Health Insurance Pool to the extent such assessment was allowed as an offset against premiums tax payments or prepayments imposed by section 77-908 or related retaliatory tax imposed by section 44-150.

(Section 77-2734.03, R.S.Supp. 1998, and Section 77-2734.15, R.R.S. 1996. November 11, 1998.)

REG-24-062 SPECIAL RULES: PIPELINE COMPANIES

062.01 The following special rules are established with respect to pipeline companies:

062.01A In general. When a pipeline company has income from sources both within and without this state the amount of business income from sources within this state shall be determined pursuant to this regulation.

062.01B Apportionment of taxable income.

062.01B(1) General definitions. The following definitions are applicable to the terms used in the apportionment factor descriptions:

062.01B(1)(a) Pipeline company means any corporate taxpayer engaged in the business of moving, conveying or transporting any oil, gas, refined petroleum products, or any other substance through a pipeline for a consideration.

062.01B(1)(b) Transportation revenue means the gross receipts or sales derived from moving, conveying or transporting oil, gas, refined petroleum products or any other substance through a pipeline for a consideration.

062.01B(1)(c) Revenue mile means the transportation of one barrel of oil, refined petroleum product or other liquid, one thousand cubic feet of gas or any other appropriate measure of a product the distance of one mile for a consideration.

062.01B(2) Sales Factor

062.01B(2)(a) The gross receipts of the taxpayer, other than transportation revenue, shall be included in the sales factor numerator in accordance with Reg-24-036 through Reg-24-040. Transportation revenue shall be included in the sales factor numerator on the basis of the ratio of the revenue miles in this state to the total revenue miles.

062.01C Unitary Group. A pipeline company can be included in unitary group with companies which are not pipeline companies.

062.02 Records. The taxpayer shall maintain the records necessary to identify revenue miles and to enumerate by state its revenue miles as those terms are used in this regulation. Such records are subject to review by the Department of Revenue or its agents.

(Section 77-2734.15, R.R.S. 1996. November 11, 1998.)

REG-24-063 ADJUSTMENTS OF INCOME TAXABLE IN ANOTHER STATE

063.01 Whenever the income of a corporate taxpayer, a member of a unitary group, or the unitary group which is taxable in another state for any taxable year is changed or corrected in a way material to the tax liability owed to this state such change must be reported to the Nebraska Department of Revenue within ninety (90) days of the final determination of the change. Reportable changes include changes made by any competent taxing authority of the other state.

063.01A In reporting any change the Tax Commissioner must be furnished complete information regarding the amount of income reported and taxes paid to the other state. The report must also concede the accuracy of the final determination or give a statement outlining the specific errors of the final determination.

063.02 Any adjustments made by amended returns filed with another state or by another state's taxing authority shall be reported to the Tax Commissioner by filing an Amended Nebraska Corporation Income Tax Return for the taxable year involved. The amended return for Nebraska must be filed within ninety (90) days of the filing of the amended state return, and should include copies of any report issued by the taxing authority of the other state.

063.03 Each amended return for Nebraska must be filed separately and should not be attached to a return for another taxable year. Payment of any additional tax must accompany the amended return.

063.04 For the purpose of determining when adjustments in another state's taxable income constitute a final determination, the following acts will be considered to be a final determination.

063.04A A decision by a tax court or a judgment, decree, or other order by a court of competent jurisdiction which has become final,

063.04B A closing agreement or settlement agreement which relates either to the total tax liability for a particular taxable year or years or to one or more separate items affecting Nebraska tax liability.

063.04C The final disposition of a claim for a refund by the other state's taxing authority.

063.04D Any informal agreement between the corporate taxpayer or a member of a unitary group and the taxing authority of the other state made for the express purpose of serving as a determination in respect to the tax liability of the taxpayer. Such an agreement must include a waiver of restrictions on assessment and the collection of any deficiencies resulting from the agreement,

063.04E Any other final judgment effecting changes in reported taxable income.

063.05 If a taxpayer fails to report any change or correction which would increase its Nebraska income tax liability or fails to file an amended Nebraska return, the Tax Commissioner may mail to the taxpayer a notice of deficiency at any time. If a taxpayer properly reports any change in its taxable income to another state, the Tax Commissioner may make an assessment relating to the change at any time within two (2) years after the report or amended return was filed.

063.06 The amended return reporting a change that results in an overpayment of tax for Nebraska is a claim for credit or refund.

063.06A The amount of the credit or refund shall not exceed the amount of the Nebraska tax attributable to the change or correction in the taxable income for the other state, or the items amended on the other state's return.

063.06B If the amended return is not filed within ninety days of the final determination of the change, interest shall not accrue after the ninetieth day.

063.06C If the amended return is not filed within two years and ninety days from the final determination of the change, or within ten years after the due date of the original return, whichever is earlier, no credit or refund shall be granted.

(Section 77-2775, R.S.Supp., 1998, and sections 77-2786(4), and (5), and 77-2793(5) R.R.S. 1996. November 11, 1998.)